



*The Commonwealth of Massachusetts*  
*Office of the Commissioner of Banks*  
*One South Station*  
*Boston, Massachusetts 02110*

JANE SWIFT  
GOVERNOR

THOMAS J. CURRY  
COMMISSIONER

September 5, 2002

Daniel F. Egan, Jr., President  
Massachusetts Credit Union League, Inc.  
304 Turnpike Road  
Southborough, Massachusetts 01772-1709

Dear Mr. Egan:

This is in response to your August 9, 2002 letter seeking a clarification of the Division of Banks' (the "Division") position on the permissibility of reimbursing certain credit union director expenses under the Massachusetts Credit Union Act, G. L. c.171.

Director reimbursement practices and procedures are routinely scrutinized during credit union financial safety and soundness examinations conducted by the Division. Your letter asks for clarification of certain director expense related matters. Those matters concern: (a) the reimbursement of registration fees and meal packages for educational conferences sponsored by the Massachusetts Credit Union League, Inc. (the "League"); (b) the reimbursement of spouse or guest travel expenses; and, (c) the reimbursement of life, accident and health insurance benefits under G. L. c.171, section 25.

The general framework for determining the permissibility of director expense reimbursements is discussed at length in a previously issued interpretive opinion of the Division.<sup>1</sup> The issue of director expense reimbursement, in general, arises out of the volunteer or co-operative corporate governance structure of credit unions. There also is a clear and unambiguous statutory prohibition on director compensation. Only "... actual expenses incurred in the performance of responsibilities of a director..." are authorized.<sup>2</sup> Moreover, safety and soundness considerations dictate that overall director expenses be reasonable in relation to the size, complexity and financial condition of an institution. A credit union also is expected to have in place adequate director expense policies and effective internal controls to monitor adherence to its policies. Incomplete, inadequate or unreasonable director expense reimbursement policies or lax internal controls will be criticized during the examination process. The Division requires corrective action,

<sup>1</sup> *Division of Banks Opinion No. O 96-005* (April 12, 1996).

<sup>2</sup> See G. L. c. 171, section 20, as amended by St.1995, c.266, s.5.



including restitution, if examiners find deficiencies in a credit union's director expense policies, procedures or actual practices.<sup>3</sup>

You have specifically asked whether reimbursement of director registration fees and meal packages for educational conferences sponsored by the League would be considered a reasonable business expense. Reasonable levels of director participation in League sponsored educational programs are legitimate business expenses. Such expenses are generally not subject to examiner criticism even if the conference meal package exceeds the Internal Revenue Service's (the "IRS") maximum meals and incidental expenses per diem rate.<sup>4</sup> The Division's policy is to take the League's itemized meal package at its face value since it is an actual cost that is beyond the credit union director's control.

In reviewing a credit union's director expense policy's standard or preset maximum daily meal allowance amount, the Division views the IRS per diem rate as a "safe harbor." The Division's examiners will closely scrutinize a director expense policy containing a maximum daily meal allowance amount in excess of the IRS per diem rate. In such a case, the burden shifts to the credit union to demonstrate to the Division's satisfaction that other documented extraordinary considerations warrant a higher maximum daily meal allowance amount. This is a high, but not necessarily insurmountable, burden for a credit union to meet.

Reimbursement of a director's spouse or guest travel expenses is another area in which you have sought clarification. Spouses or guests are always welcome to accompany directors at their personal travel expense. As a general rule, credit union reimbursement of this type of travel expense is only appropriate in limited circumstances.<sup>5</sup> In recent examinations, the Division's examiners have encountered instances where some directors have abused spouse/guest travel opportunities and/or have sought inappropriate or excessive travel reimbursements. In response, the Division has advised individual credit unions to ban this practice entirely.

In general, there are some circumstances where director spouse/guest travel may be appropriate. In those cases, the Division advises that a Board must affirmatively determine, in advance, that there is an identified bona fide business purpose that provides a meaningful and tangible benefit or savings to the membership in order to justify any

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<sup>3</sup> The intentional submission of improper or falsified expenses by a director would also raise serious issues involving breach of fiduciary duty and fitness for office.

<sup>4</sup> See IRS Publication 463, *Travel, Entertainment, Gift, and Car Expenses* (Under the IRS's two approved methods, the per diem rate for Boston ranges from \$42 to \$46).

<sup>5</sup> The Division has stated that a spouse/guest providing personal health or assistance to a handicapped or impaired director would be an appropriate area for spouse/guest travel expense reimbursement.

director spouse/guest travel related reimbursement. Moreover, such reimbursements must be reasonable. They must be limited to specifically identified types of director spouse/guest travel expenses and must fall within preset, reasonably prescribed individual and aggregate reimbursement limitations. This is a high standard to meet.<sup>6</sup>

You have asked whether the League's Annual Meeting and Convention, and other League education programs, would satisfy this "bona fide business purpose test" for director spouse/guest travel reimbursement. You specifically cite the credit union movement's tradition and culture of spousal participation and the benefits of director spousal social interaction at the League's Annual Meeting and Convention. The Division also notes that the National Credit Union Administration expressly authorizes director spouse/guest travel reimbursement under certain circumstances.<sup>7</sup> Given this tradition and history, the Division has determined that limited director spouse/guest attendance at these types of events may serve a bona fide business purpose. Individual credit unions, however, must adopt detailed reimbursement policies which place definitive limitations on director spouse/guest travel that are reasonable in relation to the credit union's financial condition and resources. Credit unions experiencing profitability or capital adequacy issues obviously would be expected to strictly limit or curtail nonessential travel, including director spouse/guest reimbursed travel.

In order to eliminate unnecessary confusion over permissible reimbursements, the Division has decided to adopt a "safe harbor" standard for director spouse or guest travel reimbursement. Accordingly, the Division's examiners will not adversely criticize a credit union's director spouse/guest travel reimbursement policy if it meets the following requirements. Each director may be reimbursed for reasonable spouse/guest travel expenses, specifically limited as to type and maximum expenses, no more than 1-2 times in a calendar year. Such director spouse/guest travel reimbursement must conform to a detailed written Board adopted policy, which expressly authorizes a specified level and frequency of director spouse/guest travel at educational or strategic planning conferences or seminars, which require spousal interaction. The Division's examiners will closely scrutinize a credit union's director spouse/guest travel reimbursement policy and actual expenses thereunder. Credit unions authorizing director spouse/guest expenses in excess of this safe harbor face a high, if not insurmountable, hurdle to overcome.

Finally, you asked for clarification of the reimbursement of life, accident and health insurance benefits under G. L. c.171, section 25 where a director is ineligible to

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<sup>6</sup> The Division notes that most for profit businesses and nonprofit associations rarely reimburse employees or directors for unlimited spouse/guest travel. Reimbursed spouse/guest travel if authorized is tightly limited as to frequency and cost.

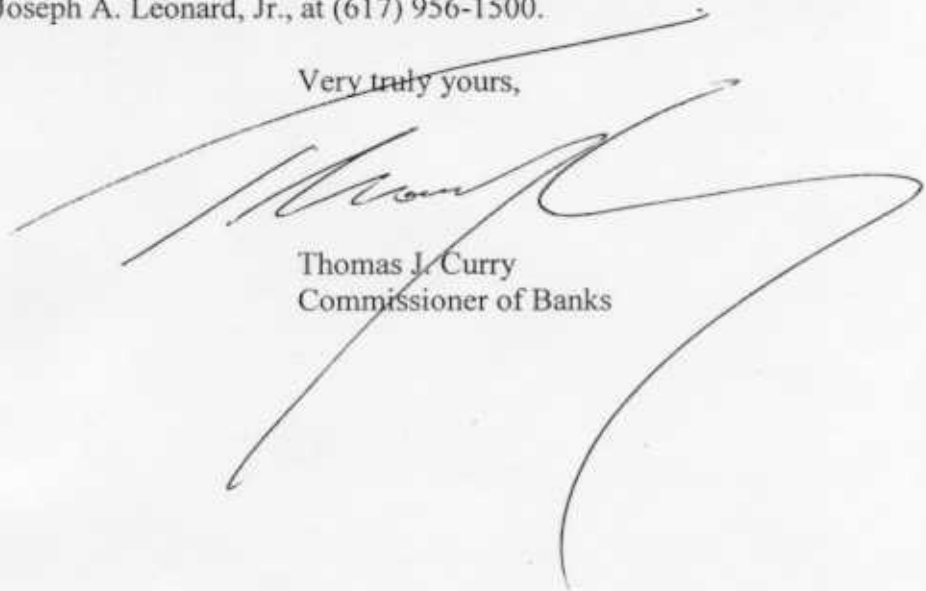
<sup>7</sup> 12 CFR 701.33(b)(2), (see 66 Fed. Reg. 245, 65628-65629 (December 20,2001)).

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join or participate in the credit union's group insurance policies. The Division recently opined that the plain language of G. L. c.171, section 25 does not authorize a credit union to make cash, "in lieu of" payments to directors who are ineligible to participate in its group plan(s).<sup>8</sup> The Division agrees with you that the current statute unnecessarily discriminates against non-employee directors for no apparent supervisory or policy reason. Accordingly, the Division likely would support any League sponsored legislation amending G. L. c.171, section 25, which would permit the payment to an ineligible director of the cash value of any per participant premium the credit union pays under its existing group insurance benefit program(s).

I hope that the preceding clarifies these matters. If you have any other questions, please contact Deputy Commissioner Lois A. Gillooly or Deputy Commissioner of Banks and General Counsel Joseph A. Leonard, Jr., at (617) 956-1500.

Very truly yours,

A large, stylized handwritten signature in black ink, likely belonging to Thomas J. Curry, is written over the typed name and title.

Thomas J. Curry  
Commissioner of Banks

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<sup>8</sup> *Division of Banks Opinion No. O-01038* (May 3, 2002); *Division of Banks Opinion No. O-02022* (May 3, 2002).